

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

February 9, 2012

H.B. No. 1775: RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL
 RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF
 OTHERS

Chair Keith-Agaran and Members of the Committee:

We oppose passage of H.B. No. 1775. This measure seeks to prohibit the use of certain types of force under the parental discipline law. Among the types of force included in this prohibition are: throwing, kicking, burning, biting, cutting, and striking with a closed fist. The bill would prohibit these types of force "where it is likely to cause bodily harm greater than transient pain or minor temporary marks."

We feel this measure is unnecessary to the efficient application of the parental discipline law and is vague to the point that it is likely to cause tremendous confusion among litigants in court. Under the current parental discipline law, a parent can only use disciplinary force which is not designed to cause "substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage." This provision already prohibits many of the acts specified in the bill. For instance, burning or cutting a child would definitely be designed to cause either "substantial bodily injury," "disfigurement" (scarring), or "extreme pain."

The parental discipline law also currently requires a parent or guardian to employ force "with due regard to the age and size of a minor." Thus the law already currently prevents the shaking of an infant, or the punching or throwing of a young child. Such acts would obviously not be in compliance with the "due regard to age and size" requirement.

Moreover, the provision of the bill requiring likelihood to cause "bodily injury greater than transient pain or minor temporary marks" is very vague and confusing. What is "transient pain?" If it means temporary or momentary pain, there is no indication how temporary the pain must be. In the case of many punches, the pain can be momentary followed by the appearance of a bruise. The same problem exists with the term "minor temporary marks." One could bite someone and state that his or her intention was to only cause temporary marks. The bill would exempt that person from prosecution.

Finally, threatening someone with a deadly weapon can already be prosecuted as felony Terroristic Threatening and interfering with breathing, if it is a choking situation, can be prosecuted as felony Abuse of Household Member.

Thank for the opportunity to comment on this measure.